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| 09/970,390      | 10/02/2001  | Daniel R. Kurz       | MICRU : 58614       | 1995             |

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FULWIDER PATTON LEE & UTECHT, LLP  
HOWARD HUGHES CENTER  
6060 CENTER DRIVE  
TENTH FLOOR  
LOS ANGELES, CA 90045

EXAMINER

BAXTER, JESSICA R

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3731

DATE MAILED: 08/13/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/970,390

Applicant(s)

KURZ ET AL.

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 54-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 54-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 9, 2003 has been entered.

### *Priority*

2. The petition filed under 37 C.F.R. 1.78 (a)(3) has not been entered.

### *Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 54-67 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,159,165 to Ferrera et al.

Regarding claim 66, Ferrera discloses the method comprising the steps of providing a vasoocclusive coil and introducing the vasoocclusive coil with said at least one end loop being directed toward the portion of the vasculature to be treated (Column 9 lines 44-61).

Regarding claim 67, Fereera discloses that the portion of vasculature to be treated is an aneurysm (Column 9 lines 44-61).

4. Claims 54-58, 61-64, 66 and 67 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,851,206 to Guglielmi et al.

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Regarding claim 54, Guglielmi discloses an occlusive device comprising a vasoocclusive coil having a primary coil configuration with a loop at least one end, said vasoocclusive coil being formed from a plurality of strands (coils 20 and 26) including a radiopaque strand (Column 7 lines 17-26).

Regarding claim 55, Guglielmi discloses that said vasoocclusive device has a primary coil configuration with a helical loop at a distal end of the coil (FIG. 1).

Regarding claims 56 and 58, Guglielmi discloses that said helical loop has a J-shape configuration (FIG. 1 end 30).

Regarding claim 57, Guglielmi discloses that said vasoocclusive coil has a primary coil having two end helical loops, with a helical loop at the proximal and distal ends of the coil (FIGS. 1-4 tip 28).

Regarding claim 61, Guglielmi discloses that said vasoocclusive coil comprises at least one loop intermediate the proximal and distal ends of the coil (FIG. 1-4 tip 28).

Regarding claim 62, Guglielmi discloses that said vasoocclusive coil comprises two loops intermediate the proximal and distal ends of the coil (FIGS. 1-4 tip 28).

Regarding claims 63 and 64, Guglielmi discloses that the radiopaque strand comprises platinum or tungsten (Column 7 lines 17-26).

Regarding claim 66, Guglielmi discloses the method comprising the steps of providing a vasoocclusive coil and introducing the vasoocclusive coil with said at least one end loop being directed toward the portion of the vasculature to be treated (Column 8 lines 43-53).

Regarding claim 67, Guglielmi discloses that the portion of vasculature to be treated is an aneurysm (Column 8 lines 43-53).

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5. Claims 54-58 and 61-67 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,868,308 to Snyder.

Regarding claim 54, Snyder discloses an occlusive device comprising a vasoocclusive coil having a primary coil configuration with a loop at least one end (FIG. 1), said vasoocclusive coil being formed from a plurality of strands (coil 11 and filaments 12) including a radiopaque strand (coil 11).

Regarding claim 55, Snyder discloses that said vasoocclusive device has a primary coil configuration with a helical loop at a distal end of the coil (FIG. 1).

Regarding claims 56 and 58, Snyder discloses that said helical loop has a J-shape configuration (FIG. 1 each end of coil 11).

Regarding claim 57, Snyder discloses that said vasoocclusive coil has a primary coil having two end helical loops, with a helical loop at the proximal and distal ends of the coil (windings 13).

Regarding claim 61, Snyder discloses that said vasoocclusive coil comprises at least one loop intermediate the proximal and distal ends of the coil (windings 13).

Regarding claim 62, Snyder discloses that said vasoocclusive coil comprises two loops intermediate the proximal and distal ends of the coil (windings 13).

Regarding claims 63, 64 and 65, Snyder discloses that the radiopaque strand comprises platinum, tungsten, or gold (Column 1 lines 62-65).

Regarding claim 66, Snyder discloses the method comprising the steps of providing a vasoocclusive coil and introducing the vasoocclusive coil with said at least one end loop being directed toward the portion of the vasculature to be treated (Column 1 lines 13-17).

Regarding claim 67, Snyder discloses that the portion of vasculature to be treated is an aneurysm (Column 1 lines 13-17).

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6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder '308.

Snyder discloses the claimed invention except for the helical loop having a diameter of about 2 mm. It would have been an obvious matter of design choice to make the diameter of the helical loops 2 mm, since such a modification would have involved the mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

***Response to Arguments***

9. Applicant's arguments filed May 9, 2003 have been fully considered but they are not persuasive. Applicant argues that Figure 8, does not show the ends of the device. However, Figure 3 shows the ends. The ends of the device show a helical loop with a J-Shape configuration.

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., end-cap/ non-jagged open ends) are not recited in the rejected claim(s). Although the claims are interpreted in

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light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Jessica R Baxter  
Examiner  
Art Unit 3731

  
JRB

August 6, 2003

  
MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700